

EXHIBIT 8A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SEWARD,)
Individually and on Behalf)
Of All Others Similarly) 08 CIV 3976 (KMK)
Situating,)
) ECF CASE
Plaintiff,)
)
Vs.)
)
INTERNATIONAL BUSINESS)
MACHINES CORPORATION,)
D/B/A IBM CORP.,)
)
Defendant.)

Videotaped deposition of RAYMOND J. LILES,
taken on behalf of the Defendant, pursuant to the
stipulations contained herein, in accordance with
the Federal Rules of Civil Procedure, before Charna
S. Perloe, Certified Court Reporter, at 1420
Peachtree Street, NE, Atlanta, Georgia, on the 10th
day of November, 2008, commencing at the hour of
11:00 a.m.

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Suite 207
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Page 2

INDEX TO EXAMINATIONS

Page

Examination by Mr. Rossman	4
Examination by Mr. Langeland	90
Examination by Mr. Rossman	96

INDEX TO EXHIBITS

Exhibit Number	Description	Marked/First Identified
1	Seward versus International Business Machines 08 CV 3976, Consent to Join Collective Action	8
2	October 17, 2003 letter, 2 pages	17
3	Earnings record, 2005-2008	19
4	Agreement Regarding Confidential Information, Intellectual Property, and Other Matters	27
5	E-mail from Mr. Lambousis to multiple recipients, Re: Reminder	46
6	E-mail string, most current e-mail November 12, 2007 from Mr. Liles to Ms. Carver	68
7	February 21, 2008 e-mail from Mr. Liles to Mr. Nutter	72
8	IBM Course Booklet	82
9	IBM Business Conduct Guidelines, October 18, 2007	83
10	Employee Relations/Legal Issues, Recording Time worked/compensatory time, September 25, 1997	85

Page 3

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Page 4

1 (VIDEO CAMERA ON.)

THE VIDEOGRAPHER: On video.

2 RAYMOND J. LILES,
3 being first duly sworn, was examined and testified as
4 follows:

5 EXAMINATION

6 BY MR. ROSSMAN:

7 Q Sir, can you please state and spell your name
8 for the record?

9 A It's Raymond Jay Liles, R-A-Y-M-O-N-D, J-A-Y,
10 L-I-L-E-S.

11 MR. LANGELAND: Before you get started,
12 are we doing federal stipulations? Shall we
13 get the stipulations on the record?

14 MR. ROSSMAN: I mean, the only
15 stipulation I usually do is that the Federal
16 Rules of Civil Procedure apply.

17 MR. LANGELAND: Okay. And the
18 objections we waive until the time of trial,
19 except those to form?

20 MR. ROSSMAN: I mean, the only thing I
21 want to stip to is the Federal Rules of
22 Civil Procedure apply.

23 MR. LANGELAND: Okay.

24 BY MR. ROSSMAN:

25 Q Sir, have you ever been deposed before?

Page 5

1 A No.

2 Q Well, you understand that you've taken an
3 oath?

4 A Yes.

5 Q And you understand that oath has the same
6 effect as if you were in court today?

7 A Yes.

8 Q There's a couple of ground rules I would like
9 to go over before we get started. First, if you don't
10 understand a question that I ask, please let me know.
11 I'll try to rephrase it if you – can you do that?

12 A Yes.

13 Q And if you don't let me know that you don't
14 understand a question, I'm going to assume that you
15 understand it.

16 A All right.

17 Q I would ask that you give audible responses.
18 So, I mean, even though we're on video, we've got a
19 court reporter who's taking down your testimony today.
20 It becomes difficult to take down shakes of the head
21 or, you know, "uh-huh" or "huh-uh," things like that.
22 So "yes" or "no" would be preferable.

23 A All right.

24 Q I would ask that we don't speak over each
25 other for similar reasons. The court reporter is

Page 6

1 taking down both what I -- the questions I ask and your
 2 responses. It becomes difficult to take down two
 3 people at the same time.
 4 A Okay.
 5 Q Finally, if you need a break at any point in
 6 time, just let me know. I'll be accommodating, but the
 7 only thing I would ask is that if there is a question
 8 pending, that you answer the question before we take a
 9 break.
 10 A Right.
 11 Q Is there any reason you're not ready to go
 12 forward with your deposition today?
 13 A No.
 14 Q What's your date of birth?
 15 A October 23, 1965.
 16 Q And what's your address?
 17 A 65 Jeremiah Way, Dallas, Georgia, 30132.
 18 Q How long have you been at that address?
 19 A Four years.
 20 Q So since 2004?
 21 A March 2004.
 22 Q Have you ever been known by any other names?
 23 A I usually just go by Ray, but nothing other
 24 than that.
 25 Q No name changes or anything like that?

Page 7

1 A No name changes.
 2 Q Where did you go to college?
 3 A I originally went to Walla Walla College in
 4 Washington State. I've been through various colleges
 5 offered through -- when I was in the Army.
 6 Q Did you --
 7 A I got degrees -- or not degrees, but
 8 certificates from Clayton State College.
 9 Q Okay. Did you graduate from Walla Walla?
 10 A No.
 11 Q Is the only degree you have from Raymond State
 12 College?
 13 A Clayton State College.
 14 Q Clayton, I'm sorry.
 15 A It's actually called Clayton State University
 16 and College, I think, now. It changed their name.
 17 Q Where is that located?
 18 A Morrow, Georgia.
 19 Q And what was your degree in?
 20 A Computer network technician and computer
 21 administration.
 22 Q When did you get your degree?
 23 A 2000.
 24 Q You said you were in the service?
 25 A Yes, I was.

Page 8

1 Q How long were you in the service?
 2 A I was in the Army nine years.
 3 Q From when to when?
 4 A 1985-2004.
 5 Q Have you ever been involved in a lawsuit
 6 before?
 7 A No. I have not.
 8 Q Have you ever filed any administrative charge
 9 against an employer?
 10 A No.
 11 Q What did you do to prepare for your deposition
 12 today?
 13 MR. LANGE LAND: Objection. You can
 14 tell him -- don't tell him anything about
 15 what we discussed, but you can tell him that
 16 we had talked.
 17 A (By the Witness) Yeah. We just talked with
 18 the lawyer, and that's about it. I mean, I've gone
 19 over in my head, you know, what might be asked or what
 20 it might be like, but that's about all.
 21 Q Did you look at any documents?
 22 A No.
 23 MR. ROSSMAN: Can you mark a copy of
 24 that, please?
 25 (Defendant's Exhibit No. 1 was marked.)

Page 9

1 BY MR. ROSSMAN:
 2 Q Sir, I just handed you a document that's been
 3 marked as Exhibit 1. It's a one-page document that
 4 says "Seward versus International Business Machines,"
 5 and it says, also, "Consent to Join Collective Action."
 6 Is this your signature on the document?
 7 A Yes.
 8 Q Did you read this document before you signed
 9 it?
 10 A Yes.
 11 Q And you signed it on or about October 17th of
 12 this year?
 13 A Yes.
 14 Q Had you seen the complaint in this action
 15 before you signed this document?
 16 A The only -- just what's available on the --
 17 there's a Web page for it.
 18 Q Do you remember the address of the Web page?
 19 A IBM call center. I don't know if it's
 20 lawsuit.com, but it's -- Google IBM call center
 21 lawsuit, and it comes up.
 22 Q How did you hear about that, that Web site?
 23 A One of the people at work pointed me to it.
 24 Q Do you remember who it was?
 25 A It was Jim Starkey. It was -- he pointed me

<p style="text-align: right;">Page 10</p> <p>1 to that.</p> <p>2 Q Do you remember when you first visited the</p> <p>3 site?</p> <p>4 A It was probably early in the year, March,</p> <p>5 April.</p> <p>6 Q And so you read the material that was posted</p> <p>7 on the Web site?</p> <p>8 A Yes.</p> <p>9 Q And did that include the complaint?</p> <p>10 A I don't know when you say "complaint." It</p> <p>11 listed what it was about, I mean, the purpose of it.</p> <p>12 MR. LANGE LAND: Objection. Do you</p> <p>13 understand his question?</p> <p>14 THE WITNESS: Not fully.</p> <p>15 BY MR. LANGE LAND:</p> <p>16 Q What's your understanding of the claims in</p> <p>17 this case?</p> <p>18 A That we're instructed to be to work prior to</p> <p>19 start time and get everything ready to work, but we're</p> <p>20 not allowed to clock in, log in prior to your official</p> <p>21 start time.</p> <p>22 Q Anything else?</p> <p>23 A That's the basis of my understanding.</p> <p>24 Q Who is your current supervisor?</p> <p>25 A As in a manager?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Okay. So she's been your first-line manager</p> <p>2 at two points in time?</p> <p>3 A Yes.</p> <p>4 Q Has Fred Nutter been your team lead -- well,</p> <p>5 have you had other team leads besides Fred Nutter since</p> <p>6 2005?</p> <p>7 A I'm going to say no, because I think they</p> <p>8 split things up around that time.</p> <p>9 Q I'm sorry. Who was -- your second-line</p> <p>10 manager is who, now?</p> <p>11 A Vicki Reidy.</p> <p>12 Q Since 2005, have you had other second-line</p> <p>13 managers besides Vicki Reidy?</p> <p>14 A I'm not sure when the person who -- who she</p> <p>15 replaced retired, but there was one prior to her.</p> <p>16 Q Who was that?</p> <p>17 A Roy Ovesen. He would have retired around that</p> <p>18 time or -- yeah. Around that time, he would have</p> <p>19 retired.</p> <p>20 Q So sometime around 2005, Roy retired?</p> <p>21 A Right, 2005, 2006. It's been about two, three</p> <p>22 years.</p> <p>23 Q What's the difference between a first-line and</p> <p>24 a second-line manager?</p> <p>25 A First line is who you go to. Basically, they</p>
<p style="text-align: right;">Page 11</p> <p>1 Q Sure.</p> <p>2 A My manager is Juanita Carver.</p> <p>3 Q Now, you said your manager is there. Do you</p> <p>4 have another supervisor, another manager besides</p> <p>5 Juanita?</p> <p>6 A She's the first-line manager.</p> <p>7 Q Okay.</p> <p>8 A We have team leads that's --</p> <p>9 Q Who are your team leads?</p> <p>10 A Fred Nutter is my team lead.</p> <p>11 Q Who is your second-line manager?</p> <p>12 A Vicki Reidy.</p> <p>13 Q Since 2005, have you had other first-line</p> <p>14 managers besides Juanita Carver?</p> <p>15 A Yes.</p> <p>16 Q Who were they?</p> <p>17 A I think Jeff Jones.</p> <p>18 Q Anyone else since 2005?</p> <p>19 A No.</p> <p>20 Q When was Mr. Jones your manager, your</p> <p>21 first-line?</p> <p>22 A He was 2006 to 2007.</p> <p>23 Q Who was your first-line manager before Jeff</p> <p>24 Jones?</p> <p>25 A Juanita Carver.</p>	<p style="text-align: right;">Page 13</p> <p>1 handle the -- like personnel matters, payroll, HR-type</p> <p>2 stuff, and then if they can't resolve the issue or it's</p> <p>3 something to do with your first line, you would then</p> <p>4 you go to your second. Vicki Reidy is the center</p> <p>5 manager. She's in charge of everything.</p> <p>6 Q Oh, okay. Then what's the difference between</p> <p>7 a team lead and a first-line manager?</p> <p>8 A Team lead is basically a technical, technical</p> <p>9 lead. If I have an issue with a call or need</p> <p>10 assistance, then that would be the person to go to.</p> <p>11 Q Does a team lead have HR responsibility?</p> <p>12 A No. It's strictly technical.</p> <p>13 Q What location are you at?</p> <p>14 A Riveredge.</p> <p>15 Q And what floor are you on?</p> <p>16 A Ninth floor.</p> <p>17 Q Since 2005, have you been at other IBM</p> <p>18 locations besides Riveredge?</p> <p>19 A No.</p> <p>20 Q Have you been on any other floor of Riveredge,</p> <p>21 worked on any other floor of Riveredge besides the</p> <p>22 ninth floor?</p> <p>23 A No.</p> <p>24 Q You haven't had any breaks in employment, have</p> <p>25 you, since 2005?</p>

Page 14

1 A No.
 2 Q Who is George Lambousis?
 3 A He is the, what they call, brand manager.
 4 Q What's that?
 5 A Brand for us means the X Series, System X
 6 machines. He's like in charge of that.
 7 Q Do you report to Mr. Lambousis in any way?
 8 A Not officially.
 9 Q What does that mean, "not officially"?
 10 A It means he's not in the reporting chain.
 11 Q Does he have any authority over you?
 12 A Yes.
 13 Q How so?
 14 A When it deals with the brand, System X, X
 15 Series, anything he puts out applies to everybody who
 16 works with the brand.
 17 Q So what does that mean? What types of --
 18 A Information, if he puts out, you know, that we
 19 have to use this particular Web site for support
 20 information, then we have to use it. If there's any
 21 change in customer procedures, any change in how we
 22 deal with a specific customer, he's the one who puts
 23 that information out, and we have to adhere to it.
 24 Q Does Mr. Lambousis have any HR responsibility
 25 over you?

Page 15

1 A No, no.
 2 Q And the brand you mentioned is the X Series;
 3 is that correct?
 4 A Yes. X Series, System X is their new name.
 5 Q What is that?
 6 A It's -- they just -- it's new machines.
 7 They're all still X Series. They just, I guess, like
 8 "System X" better than "X Series."
 9 Q These are servers?
 10 A Servers, yes, Intel-based servers.
 11 Q Now, you're at Riveredge. Is there a
 12 department that you're in at Riveredge?
 13 MR. LANGE LAND: Objection. Do you
 14 understand his question?
 15 A (By the Witness) They're not really
 16 departments. They don't break it down like that.
 17 Q How do they break down?
 18 A I mean, we're server, server team. I mean, I
 19 guess that could be considered a department, because
 20 you have CRU. So it would be server department.
 21 There's not anything official that I'm aware of.
 22 Q Okay. How long have you been -- so server
 23 team is how I should refer to it?
 24 A Yes. That would be good.
 25 Q How long have you been on the server team?

Page 16

1 A November 2003.
 2 Q Is that when you first started with IBM?
 3 A Yes.
 4 Q And again no -- have you been -- you've been
 5 on the server team the entire time that you've been
 6 employed by IBM?
 7 A Yes.
 8 Q What does a server team do?
 9 A Take customer and IBM technician calls for
 10 problem determination.
 11 Q So you may have just answered this, but what
 12 are your job duties then on the server team?
 13 A Yes, customer calls, problem determination.
 14 We'll also do -- IBM field technicians who we send out
 15 on a call to fix a machine, if they have issues or
 16 problems, they call us for additional support.
 17 Q Okay. So you have both internal and external
 18 customers?
 19 A Yes.
 20 Q And they will call you with issues that they
 21 would have with the System X servers?
 22 A Correct.
 23 Q Have you ever worked on other types of servers
 24 since you've been on the server team?
 25 A As far as IBM, no.

Page 17

1 Q Have you worked on --
 2 A We had a support contract with a Maxtor, which
 3 made network appliances, and for as long as we had that
 4 support contract, I also did the Maxtor support.
 5 Q Macintosh?
 6 A Maxtor, M-A-X-T-O-R.
 7 Q Not M-A-C?
 8 A Right.
 9 Q Okay.
 10 A They basically were getting out of the network
 11 appliance. So they contracted IBM to do their support
 12 until the end of the contract.
 13 MR. ROSSMAN: Can we take a quick
 14 break?
 15 THE VIDEOGRAPHER: Off video.
 16 (VIDEO CAMERA OFF.)
 17 (A recess was taken from 11:17 to 11:24 a.m.)
 18 (VIDEO CAMERA ON.)
 19 THE VIDEOGRAPHER: On video.
 20 MR. ROSSMAN: Would you mark that for
 21 me, please?
 22 (Defendant's Exhibit No. 2 was marked.)
 23 BY MR. ROSSMAN:
 24 Q Mr. Liles, I've just handed you a document
 25 that's been marked as Exhibit 2. It appears to be a

Page 18

1 letter dated October 17th, 2003. Did you receive this
2 letter?

3 A Yes.

4 Q Now, if you look at the third paragraph, I
5 believe it is, it says, Effective the first day of your
6 employment, your salary will be \$3,175 a month, plus
7 benefits. So I take it from that, you, at least at the
8 time that your employment started, were a salaried
9 employee?

10 A That's correct.

11 Q And have you been a salaried employee the
12 entire time you've been with IBM?

13 A It's salary for 40 hours. Anything over that
14 is overtime.

15 Q Actually, that was going to be my next
16 question, because if you look at the next sentence of
17 the letter in paragraph 3, it says, "All hours worked
18 in excess of 40 per week will be compensated at a rate
19 of time and a half."

20 I take it that was true at the start of your
21 employment then?

22 A Yes.

23 Q And has that been true the entire time that
24 you worked for IBM?

25 A Yes.

Page 19

1 MR. ROSSMAN: Can you mark that one for
2 me, please?

3 (Defendant's Exhibit No. 3 was marked.)

4 BY MR. ROSSMAN:

5 Q Now, I just handed you a document that's been
6 marked as Exhibit 3. It appears to be an earnings
7 report for you, Mr. Liles, and it is broken up by year.
8 There's data for 2005, 2006, 2007, and on the second
9 page, 2008.

10 Now, am I correct that you, in 2005, received
11 overtime payments of approximately \$2500?

12 A Yes, according to this.

13 Q Does that sound about right to you?

14 A I would have to go by this. I don't remember.

15 Q You did receive overtime payments in 2005?

16 A I mean, the payments have been — correct.

17 The payments are right, I mean, meaning I've never had
18 a payroll issue. So if this says how much I got, then
19 that's how much I got.

20 Q Okay. But it's fair to say you do remember
21 receiving overtime in 2005?

22 A Yes.

23 Q And you remember receiving overtime in 2006?

24 A Yes.

25 Q I take it you probably don't remember the

Page 20

1 exact amount you received in 2006, but you do remember
2 receiving overtime in 2006?

3 A Yes.

4 Q And you remember receiving overtime in 2007?

5 A Yes.

6 Q And you received some overtime in 2008 as
7 well?

8 A Correct.

9 Q From this document, it appears you worked the
10 most overtime in 2005; is that correct?

11 MR. LANGE LAND: Objection.

12 A (By the Witness) Yes.

13 Q Is there a reason you worked more overtime in
14 2005 versus the subsequent years?

15 A Not other than, I mean, it's based on call
16 volume, I guess.

17 Q So the higher the call volume your department
18 has, the more overtime you're going to end up working?

19 A If you get stuck on a call, then you would end
20 up staying past your end of shift until you finished a
21 call.

22 Q Okay. So one scenario where you could work
23 overtime is if a call ran over?

24 A Yes.

25 Q And did you need any sort of preapproval to

Page 21

1 work overtime if a call ran over?

2 A We're talking about 2005?

3 Q Yeah.

4 A No.

5 Q How about in 2006?

6 A No.

7 Q 2007?

8 A No.

9 Q 2008?

10 A Yes.

11 Q When did you start needing preapproval to work
12 overtime, what part of 2008?

13 A Early part of the year.

14 MR. LANGE LAND: Objection. I don't
15 think that was the testimony.

16 Go ahead. You can answer.

17 BY MR. ROSSMAN:

18 Q Did you ever need preapproval at any point to
19 work overtime at any point prior to 2008?

20 A No.

21 Q So at what point in time in 2008 did you
22 need — begin to need preapproval to work overtime?

23 A Early in the year, they — if you're going to
24 be running late or over, they would want you to tell
25 somebody.

Page 22

1 THE VIDEOGRAPHER: I'm sorry. Could we
 2 stop one moment?
 3 MR. ROSSMAN: Sure.
 4 THE VIDEOGRAPHER: Off video.
 5 (VIDEO CAMERA OFF.)
 6 (A discussion ensued off the record.)
 7 (VIDEO CAMERA ON.)
 8 THE VIDEOGRAPHER: On video.
 9 BY MR. ROSSMAN:
 10 Q Okay. I believe when we left off, we were
 11 talking about overtime preapproval beginning in 2008.
 12 How were you made aware that you needed to let someone
 13 know if you were going to work overtime beginning in
 14 2008?
 15 A Well, I guess it's a clarification. I mean,
 16 there's always -- overtime has always had to have been
 17 approved by a manager, and that was always on the back
 18 end. You submit it. They then, you know, have to
 19 approve your time card.
 20 Now it's -- you know, if it's, you know, five
 21 minutes to the end of my shift end and I'm stuck on a
 22 call and I know I'm going to be there 30 minutes or
 23 longer, then I'm supposed to notify a team lead, and
 24 then they either say continue working the call, or they
 25 get someone else to take it for me.

Page 23

1 Q How were you made aware that you needed to
 2 notify a team lead in the scenario you just described?
 3 A It was sent out via e-mail.
 4 Q Who sent it out?
 5 A I don't know who the originator was because it
 6 gets forwarded to me by a team lead.
 7 Q So Nutter forwarded it to you?
 8 A He forwards it to the group, yes.
 9 Q Do you still have a copy of that e-mail?
 10 A No.
 11 Q Have there -- so since this process started of
 12 notifying the team lead, have there ever been occasions
 13 where Mr. Nutter or someone else told you to stop
 14 working on a call and transfer it to someone else?
 15 A I've never had that issue arise.
 16 Q You've never had a call transferred?
 17 A I've --
 18 MR. LANGELAND: Objection.
 19 MR. ROSSMAN: It's a question.
 20 MR. LANGELAND: Yeah. I think it's
 21 vague. I think it doesn't -- it doesn't
 22 make sense. But if he understands it, fine.
 23 You can answer.
 24 BY MR. ROSSMAN:
 25 Q Do you understand the question?

Page 24

1 A Yes. I've never been myself stuck on a call
 2 beyond my work time.
 3 Q In 2008 or at any point in time?
 4 A In 2008.
 5 Q But you have been stuck on calls prior to
 6 2008?
 7 A Yes.
 8 Q Now, in your clarification after the break, I
 9 think you said something about management needing to
 10 approve overtime on the back end?
 11 A That's correct.
 12 Q What do you mean by that?
 13 A It means I submit X number of hours on
 14 eTOTALS. It then has to have a manager's approval
 15 before it gets processed. I mean, they can deny the
 16 overtime even if I put it down.
 17 Q Have you ever had management deny overtime
 18 that you submitted through eTOTALS?
 19 A No.
 20 Q So every time you submitted overtime in
 21 eTOTALS, it's been paid?
 22 A Yes.
 23 Q How do you know then that management needs to
 24 approve that overtime?
 25 A It says on the eTOTALS manager must sign, must

Page 25

1 approve, forget the exact wording.
 2 Q Can you describe the process of reporting
 3 overtime in eTOTALS, what you do to report overtime in
 4 eTOTALS?
 5 A It's additional hours column. You put your
 6 start and stop time.
 7 Q So eTOTALS is some sort of computer interface?
 8 A Right. It's electronic. It's a Web-based
 9 time card, basically.
 10 Q And that's something that you have access to
 11 yourself?
 12 A Yes.
 13 Q And throughout your --
 14 MR. LANGELAND: Objection.
 15 BY MR. ROSSMAN:
 16 Q -- entire employment with IBM, you've always
 17 had access to that eTOTALS system?
 18 MR. LANGELAND: Objection.
 19 THE WITNESS: Do you want me to --
 20 MR. LANGELAND: Yeah. You can answer.
 21 A (By the Witness) Yes, to my portion of it.
 22 Q Okay. So --
 23 A My time card I have access to.
 24 Q So to be clear, you've always had the ability
 25 personally to submit your own time into eTOTALS?

1 A Yes.
 2 Q During your entire employment with IBM?
 3 A Yes. The only thing we submit is overtime.
 4 Q Did you receive training on how to use eTOTALS
 5 at any point during your employment?
 6 A No.
 7 Q But you've used eTOTALS throughout your entire
 8 employment?
 9 A Yes.
 10 Q How did you know how to use the system?
 11 A You just learn, ask somebody.
 12 Q It's self-explanatory?
 13 MR. LANGE LAND: Objection.
 14 A (By the Witness) Should be. Some people
 15 can't figure it out.
 16 Q Could you figure it out?
 17 A I figured it out.
 18 Q And you never had any problems submitting your
 19 time?
 20 MR. LANGE LAND: Objection.
 21 A (By the Witness) No. Once I figured it out,
 22 I didn't have any problems.
 23 Q How long did it take you to figure it out?
 24 A I mean, even now, it's still -- even now after
 25 five years, it's still, okay, you still got to think of

1 how -- how do you submit -- I mean, if it's just
 2 straight 20 minutes here, 30 minutes there, it's pretty
 3 easy. Other than that, it can get complicated. So you
 4 just have to take the best guess.
 5 Q Have you ever had any problem submitting your
 6 overtime into TOTALS?
 7 MR. LANGE LAND: Objection.
 8 A (By the Witness) No.
 9 (Defendant's Exhibit No. 4 was marked.)
 10 BY MR. ROSSMAN:
 11 Q Now, I've just handed you a document that's
 12 been marked as Exhibit 4. At the top, it says
 13 "Agreement Regarding Confidential Information,
 14 Intellectual Property and Other Matters."
 15 Is this your signature on page 2 of this
 16 document?
 17 A Yes.
 18 Q And to the best of your knowledge, is that
 19 Juanita Carver's signature below yours?
 20 A Yes.
 21 MR. LANGE LAND: Objection.
 22 BY MR. ROSSMAN:
 23 Q And again, Ms. Carver was your first-line
 24 manager at the time -- well, as of 11-3-03?
 25 A Yes.

1 Q Have you ever been a supplemental employee at
 2 any point during your employment with IBM?
 3 A No.
 4 Q So you've always been a regular IBMer?
 5 A I was a year contractor, vendor.
 6 Q When were you a vendor?
 7 A October -- when did I start -- 2003. So
 8 October 2002 until November 2003.
 9 Q What does that mean exactly, you were a
 10 vendor?
 11 A It means I worked for another company
 12 contracted to perform duties for IBM.
 13 Q Okay. So you did that for a year, and then
 14 you moved over to become an IBM employee?
 15 A Yes.
 16 Q Now, in your position, I take it you're
 17 handling inbound calls?
 18 A Yes.
 19 Q Do you make outbound calls as well?
 20 A Yes.
 21 Q Under what situations do you make outbound
 22 calls?
 23 A If I need to follow up on a customer call, if
 24 the customer has a bad phone connection, I offer to
 25 call them back. Those are the reasons.

1 Q Do you handle e-mail inquiries as well?
 2 A We do a little bit -- I mean, if it's
 3 convenient for the customer, we may correspond via
 4 e-mail.
 5 Q Is it primarily phone, however?
 6 A Primarily phone.
 7 Q How are calls routed to you, the inbound
 8 calls?
 9 A They dialed 800-IBM-SERV and take the options
 10 to get them to us.
 11 Q Now, in the morning -- well, actually, let me
 12 back up. Currently, do you have a set schedule or a
 13 set shift?
 14 A Yes.
 15 Q What is that schedule?
 16 A 9:15 to 6:15 with a one-hour lunch.
 17 Q Is that the schedule you've always worked
 18 since 2005?
 19 A No.
 20 Q What other schedules have you worked since
 21 2005?
 22 A I used to do 8:00 to 5:00 Saturday and Sunday
 23 and 12:00 to 9:00 Wednesday, Thursday and Friday.
 24 Q When did you switch -- well, were those the
 25 only two schedules that you worked?

Page 30

1 A No.
 2 Q What other schedule -- well, since 2005, were
 3 those the only two schedules you worked?
 4 A Yes.
 5 Q When did you switch from the 8:00 to 5:00
 6 Saturday, Sunday, 9:00 to 12:00 Wednesday, Thursday
 7 Friday, to your current schedule?
 8 A End of 2006, I believe.
 9 Q Why did you switch?
 10 A They basically -- weekends is less call
 11 volume. So the manager at the time wanted to boost my
 12 call volumes, and he took me off the weekends.
 13 Q Did you object to the change at all?
 14 A Yes.
 15 Q Why?
 16 A Because it would be a loss of money.
 17 Q You get like a --
 18 A Shift premium.
 19 Q -- shift premium on the weekends?
 20 A Yes.
 21 Q So did you -- did you complain to your manager
 22 about the shift?
 23 A No. I just told him I wasn't -- it was -- I
 24 didn't care to do it, but if that's what he tells me to
 25 do, then that's what I'll do.

Page 31

1 Q Okay. Who was the manager at that time?
 2 A Jeff Jones.
 3 Q And Mr. Jones was the one who made the switch?
 4 A Yes.
 5 Q Now, can you -- how long does it take -- we'll
 6 stick with currently, your current schedule. How long
 7 does it take you to get into work in the morning?
 8 MR. LANGE LAND: Objection. From where?
 9 BY MR. ROSSMAN:
 10 Q Okay. I assume in the morning, you're coming
 11 from your house, typically?
 12 A Yes.
 13 Q May be coming from somewhere else, I
 14 understand, but typically, you're coming from your
 15 house. How long does it take you to get from your
 16 house into work in the morning?
 17 A Average would be an hour.
 18 Q About how many miles is that?
 19 A 27.
 20 Q And I imagine that hour is going to vary with
 21 the weather, traffic?
 22 A Yes.
 23 Q Sometimes more, sometimes less?
 24 A Correct.
 25 Q Do you need to badge in when you arrive at

Page 32

1 work?
 2 A Yes.
 3 Q At what locations, what doors?
 4 A The ninth floor.
 5 Q Do you need to badge in like at the front door
 6 of Riveredge or only ninth floor?
 7 A We used to have to badge in at the front door.
 8 They changed that.
 9 Q When did they -- when did they change the
 10 front door badge-in?
 11 A End of last year.
 12 Q End of 2007?
 13 A Yes, Monday through Friday, like 8:00 to 5:00,
 14 it's open.
 15 Q You've had to badge in the ninth floor the
 16 entire time you've worked --
 17 A Yes.
 18 Q -- at Riveredge?
 19 A Yes.
 20 Q Now, do you yourself always badge in, or do
 21 you sometimes piggyback, I guess, on somebody else?
 22 A No. I always badge in. Piggyback is not
 23 allowed.
 24 Q What time do you typically arrive at work in
 25 the morning, again, under your current schedule?

Page 33

1 A 8:45 to 9:00, on average.
 2 Q And how long is it going to take you to get
 3 from the parking lot up to the ninth floor?
 4 A Probably, let's say, five minutes.
 5 Q Do you stop at the -- I don't know if there's
 6 a cafeteria. I mean, do you stop anywhere along the
 7 way, or do you typically just go right from the parking
 8 lot to the floor?
 9 A I go straight from the parking lot.
 10 Q Describe when you get to the ninth floor,
 11 describe what you do to get ready for work.
 12 A As soon as I get there, I'll turn on the
 13 computer, wait for it to get to the power-on password,
 14 enter that, let it continue until you get to the
 15 Windows password and then log into the machine and then
 16 basically sit and wait for everything to load.
 17 Q What is loading up while you're waiting?
 18 A Well, the operating system has to do its
 19 stuff. Once it gets that done, you got to wait on the
 20 Same Time to start. There's this application called
 21 IBM Help, which takes a long time, and you can't really
 22 do anything until that finishes. If there's any
 23 updates, automatic updates required pushed out via the
 24 IBM automatic update program, you have to wait on
 25 those.

Page 34

1 Q Did the Same Time and the Help, the IBM Help
2 that you described, do those load up automatically?
3 A Yes.
4 Q Are there other tools that you need to pull
5 up?
6 A Yes.
7 Q What tools are those?
8 A Lotus Notes. Then there's -- it's called NSS.
9 I don't know what it stands for, and there's one called
10 PIMS, P-I-M-S. There's an in-house Macro Tool we run,
11 required to run, and then there's the ICPM.
12 Q ICP?
13 A ICPM.
14 Q M as in Mike?
15 A Yes.
16 Q All right. Anything else?
17 A Then your Web pages for the Internet.
18 Q So those are all the tools -- is that all the
19 tools that you upload or that -- strike that. Are
20 those all the tools that you log into?
21 A Yes.
22 Q What is NSS? What does it do?
23 A That's where you -- that's where you see the
24 calls. It's called -- where the calls are generated.
25 Q What does that mean?

Page 35

1 A It means it's the interface. Like if a
2 customer calls in, that's how we create the call.
3 Q What do you mean, "create the call"?
4 A Get their information. It brings up their --
5 if their phone number is registered, it brings up their
6 company information, shows entitlement for the server,
7 what type of entitlement. You put in your problem
8 description. If somebody else creates a call somewhere
9 else, we can view it in NSS.
10 Q So, I mean, this is essentially the notebook
11 for the call where you document the call, that sort of
12 thing?
13 A It's just the creation portion of it.
14 Q Oh, just the creation portion of it. You
15 mentioned entitlement. Entitlement is your contract
16 for service or your -- what is entitlement?
17 A Entitlement is what the machine -- what kind
18 of service the machine has, next business day, 24-hour
19 service.
20 Q So what type of service contract?
21 A It's the warranty coverage for the server.
22 Q What is -- can you describe the PIMS?
23 A PIMS is your parts database, shows your
24 availability of parts and locations. That's what we
25 use them for.

Page 36

1 Q Can you describe the Macro Tool?
2 A Macro Tool is something they created. It
3 basically -- kind of like a one-stop shop. You run it.
4 It goes out there, grabs your call from NSS, pulls it
5 over to ICPM, opens up the call, does a CC on the call,
6 which means customer contact, and checks previous case
7 histories.
8 Q How about the ICPM, can you describe that?
9 A That's where you do your work on the call,
10 notes. It's where you document the call.
11 Q And then you mentioned some Web pages. What
12 are those?
13 A Well, IBM support sites.
14 Q Okay. So you need to turn the computer on,
15 pull up Windows, that sort of thing. There are tools
16 that you log into. Is there anything else you need to
17 log into?
18 A No.
19 Q How about the phone system; do you log into
20 that?
21 A Yes.
22 Q Do you know what the phone system is called?
23 A It's a Lucent phone. Other than what it's
24 called, I don't know.
25 Q How do you log into the phone system?

Page 37

1 A You -- there's a log-in button, and then you
2 enter your five-digit code for -- each employee has
3 their own five-digit code. Once that code is entered,
4 you're logged in.
5 Q Okay. Now, the tools you mentioned, do you
6 log into those individually or is there a Macro? How
7 do you go about logging into those?
8 MR. Langeland: Objection.
9 BY MR. ROSSMAN:
10 Q How do you log into your tools?
11 A When you say "tools," what do you mean?
12 Q You mentioned the Lotus Notes, the NSS, the
13 PIMS, the Macro Tools, the ICPM, the Web pages.
14 A Okay. There's a password for Notes, a
15 password for NSS, password for PIMS. There's a couple
16 of Web pages that require passwords.
17 Q How about the ICPM, is there a password for
18 that?
19 A Yes, password for that.
20 Q How about the Macro Tool?
21 A No.
22 Q Are these separate passwords for the Lotus
23 Notes, the NSS, the PIMS, the ICPM and the Web pages
24 you mentioned? Are those all separate passwords?
25 A Yes.

Page 38

1 Q How long does it take to power on the
2 computer?
3 A To what point?
4 Q Well, I think you mentioned -- you said it's
5 got to power onto the password?
6 A Yes.
7 Q How long does that take?
8 A About 30 seconds.
9 Q And I guess from that point to the Windows
10 password, how long does that take?
11 A About the same, 30 seconds.
12 Q And then I think the next step you mentioned
13 is that the Same Time and the Help pop up. How long
14 does that take?
15 A Anywhere, roughly, before you can really do
16 anything, five to seven minutes.
17 Q Is it the same every day?
18 A No. It will -- it can vary with the Help.
19 Q Then I think you mentioned there were auto
20 updates?
21 A Yes. Sometimes if there's an update that's
22 mandatory, it will automatically push out to your
23 machine.
24 Q How often does that happen?
25 A A couple of times a month.

Page 39

1 Q So on this two times a month where there's
2 auto updates, how long does it take the computer to
3 work through those?
4 A It varies based on the update.
5 Q What's the longest it's ever taken that you
6 recall?
7 A 10, 15 minutes.
8 Q What's the shortest that you recall?
9 A I would say two to three minutes, kind of
10 depends on how many times it has to reboot.
11 Q So between the two- to three-minute shortest
12 time you can recall and the 10 to 15 minutes longest
13 time you can recall, is there -- can you estimate an
14 average?
15 MR. LANGE LAND: Objection.
16 Can you answer his question?
17 A (By the Witness) No.
18 Q So once you get through the computer log-on,
19 including any auto updates on the rare occasions that
20 those occur --
21 MR. LANGE LAND: Objection.
22 BY MR. ROSSMAN:
23 Q -- how long does it -- how long does it take
24 to pull up Lotus Notes?
25 A To what point? I mean, start to finish, let's

Page 40

1 say four minutes.
2 MR. ROSSMAN: Go off the record for a
3 minute.
4 THE VIDEOGRAPHER: Off video.
5 (VIDEO CAMERA OFF.)
6 (A recess was taken from 11:58 a.m. to 12:09
7 p.m.)
8 (VIDEO CAMERA ON.)
9 THE VIDEOGRAPHER: On video.
10 BY MR. ROSSMAN:
11 Q How long does it take you to pull up the NSS
12 database or the NSS system?
13 A To get to a log-in prompt, probably two to
14 three minutes.
15 Q So what does that mean, get to the log-in
16 prompt?
17 A Well, once you click on it, it then -- it's an
18 AS400 application. That green screen, I mean, it has
19 to, I guess, pull the information in before you get to
20 the actual NSS screen.
21 Q Okay. So once you get to the log-in -- it
22 takes two to three minutes to get to the log-in prompt?
23 A Yes.
24 Q And then once you enter your information, what
25 happens?

Page 41

1 A As soon as you put it in, I mean, you're --
2 it's just a couple of key commands to get to where your
3 main window is at.
4 Q And how about the PIMS system?
5 A PIMS runs the same.
6 Q So PIMS and N --
7 A PIMS, after you log in, is a few extra
8 commands you have to enter, but the times are about the
9 same.
10 Q So is it -- I'm sorry. I want to make sure I
11 understand this. Is it an additional two to three
12 minutes, or it's just part of the NSS, or how does it
13 work?
14 A It's an additional. It's a separate program.
15 Q Okay. So you click on it. How long from the
16 time you click on it to the time the log-in comes up?
17 A Probably like two minutes.
18 Q How about the Macro Tool, can you explain the
19 log-in process for that?
20 A There is none.
21 Q There is none?
22 A Right. You click it. It brings up the box,
23 and you're ready to go.
24 Q How about the ICPM, can you describe the
25 log-in process for that?

Page 42

1 A You get the first window. You select which, I
 2 guess, server you're going to be running off of, either
 3 Poughkeepsie or Lexington, depending on which one
 4 happens to be up that day.
 5 Then it takes you to a log-in pretty much
 6 right away, but then once you log in, it then has to
 7 query -- I don't know the entire startup process, but
 8 it takes probably a good two minutes before it gets to
 9 the actual window where you can even start to do
 10 anything.
 11 Q Once it gets to that window, you're in?
 12 A Yes.
 13 Q What's the process for getting to the Web
 14 pages? Well, first of all, what are the Web pages?
 15 Are there multiple Web pages or single Web page?
 16 A We use multiple.
 17 Q Which ones do you use?
 18 A They have a, basically, a server team Web
 19 page, and then there's probably four other pages off of
 20 that that you use on a regular basis. So I always
 21 start those as well.
 22 Q What are the other pages?
 23 A There's like a -- one's canned action plans
 24 for processes that you use every call. There's a RTP
 25 database. Let's see. Basically, it used to be called

Page 43

1 Info Tips. Now it's Support Site. It's the same page
 2 a customer would use to pull up information off the
 3 machines, hardware, documents and firmwares.
 4 Q Any others?
 5 A Those are the main -- I mean, I personally use
 6 a couple more, but --
 7 Q How long does it take to log on the server
 8 team Web page?
 9 A There's not a log-in for that.
 10 Q How long does it take to get to that page?
 11 A It takes a couple -- you know, probably about
 12 20 seconds to load.
 13 Q Is that the same with the other pages?
 14 A Yes. The RTP requires the -- the RTP database
 15 requires a password.
 16 Q When do you log into Lotus Notes in relation
 17 to the phones?
 18 A Say that again.
 19 Q Which do you log into first: The phone system
 20 or Lotus Notes?
 21 A Lotus Notes.
 22 Q How about NSS: Before or after the phones?
 23 A The phone is the last thing we log into.
 24 Q The phone is the last thing. Would you agree
 25 with me that out of all the tools that you mentioned,

Page 44

1 the only ones that you actually need to begin taking
 2 calls is the NSS and the ICPM?
 3 MR. LANGE LAND: Objection.
 4 A (By the Witness) No.
 5 Q What other tools do you need to begin taking
 6 calls?
 7 A I mean, you're going to need -- you're going
 8 to need the PIMS. You have to run the Macro because
 9 it's mandatory, and you need your support pages.
 10 Q Has anyone instructed you to log into any or
 11 all of the tools you mentioned before logging into the
 12 phone system?
 13 A We've been instructed to have all that up and
 14 running prior to logging in.
 15 Q When you say "all that," what do you mean?
 16 A The NSS, the PIMS, the Macro, the server page,
 17 your support tools.
 18 Q Who instructed you to log into the support
 19 tools prior to the phones?
 20 A I mean, that's management directive.
 21 Q So who?
 22 A I mean, it originally came down via George
 23 Lambousis.
 24 Q Did anyone else instruct you to log into tools
 25 prior to the phone?

Page 45

1 A Team leads tell you.
 2 Q So you're saying Nutter told you?
 3 A They -- they reinforce the directive.
 4 Q You only had one team lead, correct --
 5 A No.
 6 Q -- since 2005?
 7 A Since 2005, yes, just Fred Nutter.
 8 Q Who was your team lead prior to Nutter?
 9 A Averil Taylor.
 10 Q Anyone else?
 11 A No.
 12 Q Did anyone besides Lambousis and the team
 13 leads instruct you to log into tools before the phones?
 14 A I mean, conversation with managers, they've
 15 mentioned, you know, being there and ready to go to
 16 work at your time to start.
 17 Q When did Lambousis tell you to log into tools
 18 prior to logging into the phone?
 19 A We received an e-mail -- I don't know the
 20 date -- probably 2005, 2006, but it's been -- it's
 21 basically taught and told by pretty much everybody
 22 above myself since day one that this is what you do,
 23 team leads, managers --
 24 Q Okay.
 25 A -- and other personnel.

Page 46

1 Q Let's stay with Lambousis first. You recall
2 an e-mail in 2005 or 2006?

3 A Yes.

4 Q Was that the only time that Mr. Lambousis
5 instructed you to log into tools prior to the phone
6 system?

7 A Yes, the best I can recall.

8 MR. ROSSMAN: Mark that for me, please.

9 (Defendant's Exhibit No. 5 was marked.)

10 BY MR. ROSSMAN:

11 Q Mr. Liles, I've just handed you a document
12 that's been labeled Exhibit 5. It's an e-mail. It
13 does not have a date on it. Was this the e-mail for
14 Mr. Lambousis that you were referring to just now?

15 A Yes.

16 Q The second sentence of this e-mail says, "The
17 expectation is that your workstation is powered up, you
18 are logged into the necessary applications, and you are
19 in an available state on your phone at your start
20 time."

21 MR. LANGE LAND: Objection. Is that
22 your question, does it say that?

23 BY MR. ROSSMAN:

24 Q What, to your understanding, are the necessary
25 applications referenced in this e-mail?

Page 47

1 A The applications in order to do the job.

2 Q And again, which applications are those?

3 A You need NSS, PIMS. At this time, we were
4 using something called Clarify, which ICPM replaced
5 that, but the times are about the same for that. You
6 need your support pages. We didn't have the Macro at
7 this time.

8 Q Did you ever ask Mr. Lambousis what he meant
9 by "necessary applications"?

10 A No.

11 Q Did you ever ask any other manager what Mr.
12 Lambousis was referring to with regard to "necessary
13 applications"?

14 A No.

15 Q So -- strike that. Now, when did Mr. Nutter
16 tell you you needed to be logged into tools prior to
17 logging into the phone?

18 A I don't have a specific time, but if you come
19 in -- if you're there, not available and they see that,
20 they will say something to you. If you say, well, I'm
21 still getting prepared, they will say, well, you should
22 have been prepared prior to your start time, try to get
23 here early next time.

24 Q Has Mr. Nutter ever said that to you?

25 A Yes, as well as other team leads.

Page 48

1 Q But you don't recall when these conversations
2 took place?

3 A Not a specific date, I mean.

4 Q Do you have any idea how often that had been
5 told to you?

6 A Not -- to me specifically? I mean, I try to
7 get there on time. So let's say five or six times
8 since 2005.

9 Q Were there any other managers that told you to
10 log into tools prior to logging into the phone?

11 A No.

12 Q Other than Exhibit 5, the Lambousis e-mail, do
13 you have any documents that directed you to log into
14 tools prior to logging into the phone?

15 A No.

16 Q At what point do you log into the phone? I
17 mean, is it right at your shift, before your shift
18 starts, after your shift starts?

19 A You have to do it, you know, not more than
20 five minutes prior, so I usually two, two to three
21 minutes. Usually, you're sitting there watching the
22 clock to make sure you don't miss it, because if you
23 miss it, you get in trouble.

24 Q Have you ever attempted to record in TOTALS
25 the time you spent logging into the machine, logging

Page 49

1 into TOTALS -- I'm sorry -- logging -- strike that
2 question. That was a terrible question.

3 Have you ever tried to record in TOTALS the
4 time you spend logging into the computer, logging into
5 tools?

6 A No.

7 Q Has anyone ever told you you should not record
8 that time in TOTALS?

9 A It's been told.

10 MR. LANGE LAND: That's his answer.

11 BY MR. ROSSMAN:

12 Q Has anyone ever told you that you should not
13 record the time that you spend logging into the
14 computer or logging into tools?

15 A Yes.

16 Q Who told you?

17 A Usually, it comes from team leads.

18 Q Which team lead told you?

19 A I mean, there's -- I don't have anyone
20 specific. I mean, there was a -- there was an
21 individual, Kim Gunn, who did the scheduling, and I
22 know she's made that clear. You know, specifically,
23 you don't record this time prior to your shift.

24 Q Who is Ms. Gunn?

25 A She used to work there.

Page 50

1 Q When did she work there?
 2 A She left probably 2006, Johnson, Kim Gunn
 3 Johnson. She's probably on there.
 4 Q And she was a scheduler?
 5 A Yes. She did scheduling. She would also --
 6 there was no way -- back to the eTOTALS, there was no
 7 ever official training, but if you had questions, she
 8 was the person to ask.
 9 Q Was she a manager?
 10 A No, team lead.
 11 Q She was a team lead. Was she your team lead?
 12 A No.
 13 Q So when did Ms. Johnson tell you not to record
 14 the time you spend logging into the machine and logging
 15 into tools in TOTALS?
 16 A It would have been when we first, 2003, when
 17 we first started using TOTALS.
 18 Q And how did the conversation come up? What do
 19 you recall about it?
 20 A Just in telling us how to record time, showing
 21 us how to record time in TOTALS.
 22 Q I thought you said you figured TOTALS out
 23 yourself.
 24 A Well, they show you how to log in, and they
 25 show you the basics. You know, other than -- they show

Page 51

1 you other than, you know, additional hours, here's how
 2 you record additional hours, but they don't tell you
 3 how to -- you know, meal breaks, lunch breaks,
 4 illnesses. They just show you the basics. If you
 5 change your days, you have to change it in TOTALS.
 6 They don't tell you any of that. If you change your
 7 hours, they don't tell you.
 8 Q So were other people present when Ms. Gunn,
 9 Ms. Gunn Johnson, I guess, told you not to record your
 10 time in TOTALS?
 11 A There was probably three or four people there,
 12 all the new hires for that day.
 13 Q Who were those other people that were there?
 14 A I don't remember who was hired my time.
 15 Q And how did the subject of recording log-in
 16 time come up?
 17 A Just in showing, you know, this is how you put
 18 your start time, stop time.
 19 Q And what specifically did Ms. Gunn Johnson
 20 say?
 21 A That, you know, whenever your shift starts,
 22 that's the times you put on TOTAL. If you come in
 23 early, you don't put that on there.
 24 Q Was that a question you had about whether or
 25 not log in times should be recorded?

Page 52

1 A No.
 2 Q Was it a question somebody else had?
 3 A I don't recall it being a question. I think
 4 it was just more of a statement.
 5 Q Aside from Ms. Gunn Johnson, did anyone tell
 6 you not to record log-in time into TOTALS?
 7 A I mean, it's been reported. I don't know
 8 anybody specific or times, but it's the general -- the
 9 general feeling is what we're told, the general
 10 attitude.
 11 Q Have you ever seen any sort of statement in
 12 writing that you should not record log-in time in
 13 TOTALS?
 14 MR. LANGE LAND: You mean, aside from
 15 this?
 16 A (By the Witness) No. Other than what we're
 17 told here, that's the only --
 18 Q Okay. Would you please turn back to Exhibit
 19 5? And again, this is the Lambousis e-mail. Can you
 20 point out to me where Mr. Lambousis says don't record
 21 log-in time in TOTALS?
 22 A I mean, it doesn't state that specifically.
 23 Q So can you tell me where in Exhibit 5 you
 24 understand Mr. Lambousis to be saying don't record
 25 log-in time in TOTALS?

Page 53

1 A I mean, it doesn't -- how can we say this? I
 2 mean, it's mentioning start times. So that's when
 3 you -- that's when you start, is when you officially
 4 start getting paid. So they're saying they want all
 5 this stuff ready to go prior to your start time.
 6 And we're not -- we're told -- it's not here,
 7 but we're told don't log in 15, 20 minutes early
 8 because it throws the numbers off; log in no more than
 9 five minutes prior. I mean, I don't have anything that
 10 says that in writing, but that's what we're told to do.
 11 Q So --
 12 A That's where this came about, is because
 13 people were logging in 15, 20 minutes early.
 14 Q In Exhibit 5, Mr. Lambousis doesn't mention
 15 TOTALS, does he?
 16 A No.
 17 Q And in Exhibit 5, Mr. Lambousis doesn't talk
 18 about recording time, does he?
 19 A No.
 20 THE VIDEOGRAPHER: Five minutes till
 21 the tape change.
 22 MR. ROSSMAN: Okay.
 23 BY MR. ROSSMAN:
 24 Q So you would agree with me then you've never
 25 seen in writing any statement that you should not